

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America

vs.

(1) Sean Glen McNiece

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NO: AU:11-CR-00089(1)-LY

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE

The Magistrate Judge submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b)(3). The District Court referred this case to the United States Magistrate Judge for the taking of the defendant's felony guilty plea and for his allocution pursuant to Federal Rule of Criminal Procedure 11.

On April 5, 2011, the defendant and counsel appeared before the Magistrate Judge. The undersigned addressed the defendant personally in open court, informed him of the admonishments under Rule 11 of the Federal Rules of Criminal Procedure, and determined that he understood those admonishments.

The defendant plead guilty to: eight counts of interference with commerce by robbery, in violation of 18 U.S.C. § 1951(a) and two counts of bank robbery, in violation of 18 U.S.C. § 2113(a). There is no plea agreement in this case.

The Magistrate Judge finds the following:

1. The defendant, with the advice of his attorney, consented to enter this guilty plea before the Magistrate Judge, subject to final approval and sentencing by the District

Judge;

2. The defendant fully understands the nature of the charge against him and possible penalties;
3. The defendant understands his constitutional and statutory rights, including the right to a jury trial, understands these rights can be waived, and understands the meaning and effect of waiving these rights;
4. The defendant does not waive his right to appeal;
5. The defendant's plea was made freely and voluntarily;
6. The defendant is competent to enter this guilty plea; and
7. There is a factual basis for this plea.

RECOMMENDATION

The Magistrate Judge **RECOMMENDS** the District Court accept the guilty plea and, after reviewing the presentence investigation report, enter a Final Judgment of guilt against the defendant.

WARNING

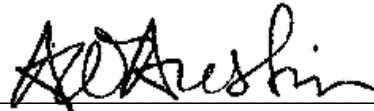
The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within fourteen (14) days after being served with a copy of the Report shall bar that party from de novo review by the District Court of the

proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the District Court to which no objections were filed. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

To the extent that a party has not been served by the Clerk with this Report and Recommendation electronically pursuant to the CM/ECF procedures of this District, the Clerk is directed to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED this 5th day of April, 2011.

A handwritten signature in black ink, appearing to read "Andrew W. Austin", written over a horizontal line.

ANDREW W AUSTIN
U.S. MAGISTRATE JUDGE